IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.12.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.1187 of 2007

Selvi ... Petitioner

vs.

1. The State of Tamil Nadu
Rep. by its Secretary to
Government, Prohibition & Excise Dept.
Fort St. George,
Chennai-600 009.

2. The District Collector and
District Magistrate , Kancheepuram District,
Kancheepuram. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Thanjan
For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor.

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner herein challenges the impugned order of detention, dated 15.05.2007, whereby, she has been detained as 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. It is seen from the grounds on which the detention order came to be passed that on 21.04.2007, the Inspector of Police attached to Walajabad Police Station along with his Police party, conducted a prohibition raid and at the River Bund North of Amgampakkam Colony, he

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found the detenue selling some liquid in a tumbler and receiving money. On seeing the police party, she tried to escape, however, she was apprehended and the search revealed that she had in her possession four plastic cans, each with a capacity of 35 litres, totally containing 140 litres of diluted rectified spirit with poisonous odour . The detenue was arrested and the contraband and sale proceeds were seized. A case was registered in Crime No.124 of 2007 for offences under Sections 4(1)(i), 4 (1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act read with Sections 6 & 11 of RS Rules 2000. Samples of the contraband sent for chemical analysis were found to contain 9.3 mg. weight/volume of atropine and the Analyst's opinion was to the effect that diluted rectified spirit mixed with such volume, if consumed, would be fatal if not treated vigourously. The Detaining Authority, taking note of six adverse cases to the credit of the detenue, clamped the order of detention branding her as 'Bootlegger'.

3. The prayer in this petition is for the issuance of a writ of Habeas Corpus to direct the respondents to produce petitioner Selvi, now confined in Special Prison for Women, Puzhal, Chennai, before Court and set her at liberty by calling for the records pertaining to the order of detention passed by the second respondent dated 15.05.2007 under Ref. B.D.F.G.I.S.S.V. No.31 of 2007.

4. Learned counsel for the petitioner attacked the detention order on the only ground that there was non-application on the part of the Detaining Authority with reference to the contents of the Case History submitted by the Sponsoring Authority, wherein, the Authority has stated that on 21.04.2007 at 16.15 hours, during the prohibition raid conducted, 148 litres of diluted rectified spirit was seized and that the accused was arrested on the same day at 16.00 Hours. According to the learned counsel, inasmuch as the accused could have been arrested only after the raid, the statement of the Sponsoring Authority that the accused was arrested at 16.00 Hours, ie., prior to the raid and seizure, would only suggest that the Detaining Authority, without applying his mind to the contents of the document, has mechanically passed the detention order; thus, the same deserves to be quashed.

5. We have carefully considered the materials available on record with regard to the contention raised by the learned counsel for the petitioner. The case history available at page No.93 of the booklet proceeds as if, even prior to the raid which was conducted at 16.15 hours on 21.04.2007, the accused was arrested at 16.00 Hours on 21.04.2007 and brought to police station, which is not possible at all since arrest could be only subsequent to the raid and seizure. The Detaining Authority should have called for a clarification from the Detaining Authority with reference to such serious lacuna. In the absence of valid explanation, we are of the view that this aspect only depicts the non-application of mind on the part of the Detaining Authority and, as a consequence, the detention order is liable to be quashed.

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6. In this view of the matter, the Habeas Corpus Petition is allowed and the order of detention is quashed the and the detenue is directed to be set at liberty forthwith from custody unless she is required in connection with any other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. Secretary to Govt., Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2. The District Collector and District Magistrate,
Kancheepuram District.

3. The Public Prosecutor, High Court, Madras.

4. The Superintendent, Special Prison for Women, Puzhal, Chennai.

HCP No.1187 of 2007.

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RVL 14.12.2007

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